

MIDDLE DISTRICT OF PENNSYLVANIA

PETITIONER

SOTO-MONILA, JOSE FERNEY

[FILE NO: 

v.

RESPONDENTS

MICHAEL KUNES [WARDEN CLINTON CNTY. CORR. FACILITY]

KRISTI NOEM [ICE-DHS SECRETARY]

ASSISTANT FIELD DIRECTOR REID- [ICE ERO WILLIAMSPORT]

FILED
SCRANTON

FEB 06 2026

PER 

DEPUTY CLERK

PETITION FOR WRIT HABEAS CORPUS PURSUANT TO § 2241

I, SOTO-MELINA JOSE FERNEY, hereby petition to this court for a writ habeas corpus pursuant to 28 U.S.C. § 2241, challenging the continued unconstitutional detention of my person by the Department of Homeland Security [DHS] and the Immigration Customs Enforcement [ICE] at the Clinton County Correctional Facility in McElhattan, Pennsylvania. I bring this petition because my detention under 8U.S.C§1225(b)(2) rather than 8U.S.C§1226(a), is in violation of my Fourth [4th] Amendment, Fifth [5th] Amendment Due Process clause, bond regulations, and the provision of the Immigration Nationality Act [INA].

Petitioner here, is a native and citizen of Colombia who fled Colombia into the United States in 2024 because of persecution he faced while living in Colombia. Petitioner entered the United States on December 10, 2024, without inspection and was apprehended and detained by DHS-ICE for a month, but was released by ICE on January 10, 2025 on his own recognizance on humanitarian grounds and with supervision under the Intensive Supervision Program (ISAP) by ICE. Petitioner was placed on ankle monitor and was required to check-in with ICE at their office location in Florida. Petitioner lived in Florida with his family while released by ICE and has complied with ICE supervision as well as his regular check-ins. Petitioner has no criminal history in Colombia nor in the United States. Petitioner filed a timely asylum in the United States while being released by ICE and that application remains pending as of date.

Petitioner, during one of his visits to ICE office for his regular check-in, informed his case manager of his need to relocate to Pennsylvania to live with his family there, and petitioner was granted an approval of that request. Petitioner moved to Pennsylvania from Florida, and has lived in Pennsylvania with his family with no issues for over 3 months. Petitioner still remained on ankle monitor supervision, has complied with all supervision requirements, and all court orders. Petitioner went for his check-in at ICE office and was informed he was good and was deemed as no danger nor flight risk and was told to come two (2) days later to get his ankle monitor off since he passed supervision with merits. Petitioner did as told and reported to ICE office again two days later, but unfortunately, petitioner was detained and arrested without being told any reasons why he was being detained and arrested. Petitioner was then transferred to Clinton County Jail in McElhattan, PA and has since then been in confinement for over one month without reasons for detention, nor a bond hearing to decide if further detention is warranted in violation of his Fifth Amendment Due Process right, and the Administrative Procedure Act

Petitioner has tried talking to ICE agents but to no avail, and hereby seeks this habeas petition as a relief to grant him Immediate Release from this unconstitutional detention from ICE agents and the facility.

ARGUMENT

Does petitioner current detention under §1225(b)(2) rather than under §1226(a), violates his due process rights, the INA, and the Administrative Procedures Act?

Answer: Affirmative, It does violates his rights and should be remedied.

A. Petitioner Detention Violates Fourth Amendment Right From Unreasonable/Unlawful Seizure

The U.S Const. Amend. IV, protects people from unreasonable seizure. (' the rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated'). ICE agents violated petitioner by restraining his liberty by physical force and show of authority to which he submitted. Petitioner was not told why he is being restrained, detained and arrested, but was rather unreasonably seized during his ICE check-in against his liberty. This is a violation of petitioner's 4th amendment right, and this violation has resulted in petitioner continued detention at the Clinton County Correctional Facility.

B. Petitioner Continued Detention Under §1225(b)(2) Violates Fifth Amendment Due Process Clause, the Administrative Procedures Act, and the INA

The Fifth Amendment provides that no person shall ' be deprived of life, liberty, or property without due process of law.' U.S Const. Amend. V. The Due Process Clause of the Fifth Amendment applies to all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S at 693.

Mr. Soto Melina Jose Ferney is detained pursuant to 8 U.S.C § 1225(b)(2), which states that ' an alien who is an applicant for admission, if the examining officer determines that alien seeking admission is not clearly and beyond doubt entitled to be admitted, the alien shall be detained under §1226(a) of the title'. Petitioner here has a pending Asylum application with USCIS, and once adjudicated in his favor, changes his status and grants him permanent legal resident status. Therefore his detention under §1225(b)(2) rather than §1226(a) violates his due process.

While an applicant for admission is apprehended after being present in the United States for a period of time, like petitioner here, they are not "actively seeking admission" at the time of their arrest, so section 1225(b)(2) does not govern their detention. Petitioner detention, is therefore governed by section 1226(a) which grants the Attorney General discretion to either detain the non-citizen or to release them on bond or conditional parole.

Petitioner here has been held without bond, and the government's refusal to provide a bond hearing violates the INA and due process of the fifth amendment. Petitioner has a fundamental interest in being free from the government confinement and this detention of him without bond hearing and determination of whether he is a flight risk or public safety risks violates his due process.

Petitioner has not ben given his due process to a bond hearing and his continued mandatory detention violates consitutional due process clause of the Fifth Amendment. Petitioner was released on his own recognizance by ICE before this current detention and was under the ISAP supervision with ankle monitor. Petitioner was wrongfully detained before his parolee status expired also in violation of due process. Courts have held that the right to a bond hearing is not merely statutory, but also constitutional. i.d see also, e.g, *Ndiaye v. Jamison*, no.

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25-cv-6007 (2025) WL 3229307, at *1 (E.d PA. Nov 19, 2025) ([Due process and proper statutory interpretation of the INA preclude Ndiaye from being mandatorily detained without bond under §1225(b)(2)...]). Cantu-Cortes, 2025 WL 3171639, at *2 ("ICE's mandatory detention of petitioner under 8U.S.C§1225(b)(2)(A) violates the laws of the United States and petitioner's right under the Due Process Clause"). Therefore petitioner is entitled to an immediate release since ICE has intentionally violated his due process by not granting him a bond hearing. A bond hearing, if ordered by the court after such violation, will be intentionally prejudicial and vindictive to petitioner, thereby making immediate release a suitable remedy in the interest and fairness of justice.

CONCLUSION

Because ICE's mandatory detention of petitioner for over a month without a bond hearing violates the INA and the Due Process Clause of the Fifth Amendment; Habeas relief is warranted in form of IMMEDIATE RELEASE.

RELIEF REQUESTED

Petitioner hereby requests this honorable court to:

1. GRANT and ORDER his IMMEDIATE RELEASE from this unconstitutional detention.
2. GRANT a TEMPORARY RESTRAINING ORDER (T.R.O) enjoining ICE, and their agent, from transferring him to a different facility while this habeas petition is pending to avoid jurisdictional issues and to avoid further infringement of liberty.
3. GRANT a TEMPORARY RESTRAINING ORDER (T.R.O) enjoining ICE, and their agent, from re-detaining him after release without an immediate and affordable bond hearing where the burden of proof is heavily placed on the government to show beyond doubt if he is a flight or safety risk and why detention is warranted.
4. ORDER respondents to respond to why this habeas shouldn't be granted within 3 business days.
5. ORDER his Immediate Relief based on his previous conditions of supervision, or supervision as the court deems appropriate, or in the alternative provide him with a bond hearing where the burden of proof is heavily placed on the government to show beyond doubt if he is a flight or safety risk and why detention is warranted.

Respectfully Submitted on Jan 27, 2026, by:

/s/

SOTO-MONILA, JOSE FERNEY
58 Pine Mountain Rd,
McElhattan, PA 17748.

CERTIFICATE OF SERVICE

The undersigned certifies that on Jan 27th, 2026, a true and correct copy of the foregoing was mailed to the Clerk of Court via regular mail postage prepaid.